VIRGINIA LAW REGISTER

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Issued Monthly at $5 per Annum. Single Numbers, 50 cents.

All Communications should be addressed to the PUBLISHERS.

We had hoped to have given in this number of the REGISTER the opinion of the Supreme Court of the United States in the case of Virginia *v.* West Virginia, but were informed by the clerk of the court that the same cannot be given out until some time about the 1st of July—too late for this issue. As is well known, the Court overruled the demurrer of West Virginia and took jurisdiction.

Constitutional Questions.

The final outcome of the case will be watched with much interest and a good many interesting questions present themselves; the chief amongst which is, How can the Supreme Court enforce its mandate in case it decides that West Virginia is responsible for its portion of the debt? Unlike the case of Dakota *v.* North Carolina, 192 U. S. 318, there is no collateral which can be sold. The Legislature of West Virginia, in order to pay the debt, must lay a tax. Suppose it declines to do so, can the members be coerced into action by any process emanating from the Court? Or can the Supreme Court sequester, so to speak, the taxes in the hands of the State Treasurer, or can it have an execution levied upon any property in the State? Rees *v.* Watertown, 19 Wallace 107, seems to negative this idea.

The Supreme Court has repeatedly declined to take jurisdiction in cases in which there was no power vested by an act of Congress to enforce in judgment. In Gordon *v.* United States. 117 U. S. 697, the Supreme Court declined to take jurisdiction of an appeal from the Court of Claims under the statute as it stood at the time of the decision, on the ground that there was not vested by the act of Congress power to enforce this judgment; and so in several other cases which might be quoted. The Court in Dakota *v.* North Carolina, whilst setting out these authorities, dodged the question, holding that there was collateral for the North Carolina bonds which it could order to be sold.

Our own Court of Appeals in the case of Lankford *v.* Taylor,

99 Va. 577, declined to grant a decree for specific performance because of its inability to perform the decree. In the Virginia case, however, the Court has now taken jurisdiction. It will be confronted directly with the question which it seems to have successfully gotten around in the Dakota and North Carolina case, but what will be the final result time alone will show. The case is likely to cause as much interest, if it does not have the same practical result, as Chisholm *v.* Georgia.

Suits between the States.

There have been more cases than most lawyers imagine in which the states of the union have invoked the original jurisdiction of the Supreme Court of the United States under § 2, art. III, of the Federal Constitution. Most of them, it is true, have been upon questions of boundaries. But new questions are constantly arising as the country grows and many of them will of necessity invoke this jurisdictional clause.

One of the most novel questions raised has been that of Kansas *v.* Colorado, lately decided. Kansas claimed that its citizens were damaged by the reduction in the flow of the Arkansas River, owing to its use by Colorado for irrigation purposes, and sued the latter State in equity asking an injunction to prevent Colorado from lessening the water supply. Colorado replied that it owned the river from its source to the Kansas border and would use the waters thereof to suit itself. The Court "side stepped", dismissing the case for lack of proof of damages, but gave permission to have the question again raised if proof of damage was shown. Kansas had many years before been doing just what she complained of Colorado, but no state below her "kicked." Her ox being gored, she went to law, with the result stated. As between private individuals we suppose there can be little doubt that the case as Kansas presented it would have entitled her to an injunction on the ground of irreparable injury, if damage could have been proved. But a far more interesting question was raised when the United States intervened and asked the court to rule that the waters of an interstate river are the property of all the people of the valley, irrespective of state lines or riparian ownership. But on this question the court

again "side-stepped" with unquestioned celerity. Rightly so, we think. To have decided in favor of the United States' contention would have been judicial legislation in the last degree. The court, however, practically denied the right even of Congress to make any law on the subject. Nor can we see how Congress can intervene. The States' power over their own land and water is supreme within their own boundaries, and who can say them nay as to the way they exercise their sovereignty over both.

The Court hints in a mild way at the duty of Kansas to allow Colorado to do as Kansas herself had been doing, and to come to terms as to a fair division of the water, and even goes to the extent that on a proper case made, some means can be found to do equity between them.

We suppose it will end in an appeal to the "Police Power", or possibly the "Interstate Commerce Clause" can be summoned to aid. One of them is generally the *Deus ex machina* when the troublesome question of state sovereignty gives the modern cult of civilization trouble. Why not declare the Arkansas River a post road?

Photographs in the Record.

The application of photography to obtain evidence for the purpose of suppressing vice in New York City suggests the practicability of the use of the art in other cases. In one instance, by means of a pocket camera, instantaneous views of variety and concert saloons "in full operation" were taken in the nighttime under the electric light of the streets.

If in nisi prius trials pictures of witnesses on the stand could be reproduced in the various stages of their testimony, a history of the case would be obtained which would often be more truth-telling than record evidence itself. There is much in the appearance and manner of the witness which the court of error can never know. Photography will supply a good deal that is lacking. The phonograph would complete the rest.

When instantaneous photography is utilized in the courts, expressions of features will be caught and retained for the future study of the appellate judge. Impressions will be obtained which may even escape the critical attention of the observant trial court.

Questions of fact may then be reviewed with discrimination

and without error. We look forward to the day when the bill of exceptions will present a living photograph of the trial below. Photography has already been used in the courts to determine the question of the identity of an individual. Udderzook *v.* The Commonwealth, 76 Pa.; Luke *v.* Calhoun County (Ala.), 14 Am. Law Reg. 395. In the former case a mutilated body whose face was discolored and swollen was found, having been buried apparently for some days. The witness who found it had never seen the person before. It was held, that he might testify that the face resembled the photograph of the person alleged to be the one found. The question whether the witness could identify it was left to the jury.

For the purpose of detecting handwriting, photography has been found to be an invaluable aid. In a case in Kentucky involving the question of the genuineness of the handwriting of a deceased person, the introduction of a magnified photograph of the paper alleged to have been written by him, was of itself a convincing proof of its falsity. We recall another case in which expert testimony as to the genuineness of an indorsement was so conflicting, that if it had been left to the jury without other proof, a disagreement would have doubtless been the result.

In criminal cases the uses of the art are apparent. A photograph which would preserve the features and expressions of the accused at the time of his arrest and when undergoing a preliminary examination, which in cases of homicide would present the body with all its surroundings, before any change has taken place in its condition, would enable the court and jury to arrive at a conclusion more satisfactorily than from the statements of the accused, the conflicting testimony of the witnesses and the rude plans of incompetent draughtsmen.